

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 3353 – SB 3598

April 29, 2010

SUMMARY OF AMENDMENT (018035): Deletes all language following the enacting clause. Effective October 1, 2011, creates a Procurement Commission (Commission), a State Protest Committee (Committee), and an Advisory Council on State Procurement (Council). The three-member Commission replaces the current Board of Standards and is required to prescribe standards, rules, policies, and procedures governing the procurement, contracting, management, control, and disposal of all supplies and services by the state. The Commission will be made up of the Comptroller, and the Commissioners of General Services (DGS) and Finance and Administration (F & A). The Committee is authorized to act on any protest brought against any procurement opportunity within the state and is made up of the Treasurer, Commissioners of DGS and F & A or their designees provided that at least one member of the committee is not a designee. The 12-member Council is required to meet at least twice per year to discuss problems and provide recommendations for the improvement of the procurement process in the state. The Council will consist of five voting members representing various state agencies and seven non-voting members representing the bidder and vendor communities. The Council will provide comment on any changes to law, standards, rules, policies, and procedures proposed by the General Assembly or the procurement office. Prohibits members of the Council from serving more than four consecutive years as a non-voting member and requires a two-year lapse in service between the end of a member's term and the time at which they can be re-appointed.

Effective March 31, 2011, creates a Procurement Office (Office) that will reside in a department to be designated by the Governor with the consent of the Comptroller of the Treasury and requires the Governor to appoint a chief procurement officer (CPO) who will be a full-time public official to serve at the pleasure of the Governor. Authorizes the CPO to employ the necessary personnel to carry out the duties of the Office with compensation amounts to be fixed by the Governor. Authorizes the transfer of procurement positions from the Departments of General Services and F & A to the newly established Office along with funding for these positions as well as all contracts, procurements in process, and documents in existence within the departments.

Effective July 1, 2011, requires the CPO to establish a single procurement Web site that will include information regarding how to register for and do business with the state as well as information on all procurements within the state both in process and previously awarded.

Effective October 1, 2011, requires the CPO to develop a transition plan that includes the implementation actions by date to consolidate the procurement and contracting for goods, services, and grants as well as the disposal of any goods and services by the state. Requires the CPO to develop proposed consolidated statutes, rules and regulations, standards, and procedures

to be followed as well as establish processes for central procurement, central grant management, central performance and quality assurance, central bidder relations management, and a central process for disposal of goods. Requires the CPO to develop and conduct training for the Office and agency procurement staff.

Authorizes the Comptroller to examine and approve all procurements, contracts, grants, and other documents that would potentially incur financial obligations against the state. Requires all requests to procure goods or services by non-competitive contract must be filed with the Fiscal Review Committee (FRC), the Comptroller, and the CPO simultaneously. Establishes criteria for FRC review of any non-competitive contracts and competitive or non-competitive amendments. Requires FRC to provide agencies with policies regarding submission requirements for amendments. Requires the State Building Commission (SBC) and the Department of Transportation (TDOT) to file a report with FRC of all contracts awarded that would meet the submittal requirements within 30 days of award date. Establishes criteria that prohibit current and former public employees from participating in procurement transactions. Prohibits contractors and sub-contractors from demanding or receiving money not included in the bid price for work or for an agreement not to compete and creates a Class A misdemeanor for violations. Removes all references to “the board of standards” and “the commissioner of general services” and replaces them with “the procurement commission” and “the chief procurement officer” respectively from Tenn. Code Ann. Title 12, Chapter 3, with exception of Tenn. Code Ann. § 12-3-806(a) and in Tenn. Code Ann. § 12-3-214 where all references to the “board of standards” will be replaced with “protest committee.” Removes all references to “the review committee” and “the commissioner of finance and administration” from Tenn. Code Ann. Title 12, Chapter 4, and replaces them with “protest committee” and “the chief procurement officer” respectively.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$419,200/FY10-11
\$806,400/FY11-12 and Subsequent Years

Other Fiscal Impact – There will be a shift in payroll and operational costs of \$8,024,000 which includes 69 positions (\$6,304,000) within the Divisions of Purchasing and Property Utilization within the Department of General Services and 19 positions (\$1,720,000) from the Division of Resource Development and Support and the Office for Information Resources within the Department of Finance and Administration. This shift in allocations will not result in an increase to state expenditures.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue - Not Significant
Increase State Expenditures - \$51,300/FY10-11
\$662,300/FY11-12
\$582,300/FY12-13 and Subsequent Years

Increase Local Revenue – Not Significant
Increase Local Expenditures – Not Significant

Other Fiscal Impact – In the future there will be a shift in payroll and operational costs of \$7,244,000 which includes 69 positions (\$6,304,000) from the Divisions of Purchasing and Property Utilization within the Department of General Services (DGS) and 10 positions (\$940,000) from the Division of Resource Development and Support and the Office for Information Resources (OIR) within the Department of Finance and Administration (F&A) to a Department that will be determined by the Governor. This shift in allocations will not result in an increase to state expenditures.

Assumptions applied to amendment:

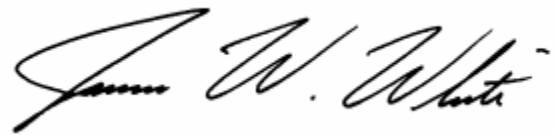
- The Procurement Commission will meet at least once per year in Nashville. There will be no increase in state expenditures for Commission meetings.
- The Protest Committee will meet as necessary to hear and resolve protest. These Committee meetings will be held in Nashville and will result in no increase in state expenditures.
- The Procurement Council will meet at least twice per year in Nashville. The five voting members of the Council will not receive travel reimbursements as they will represent offices located in Nashville. Recurring increase in state expenditures for travel reimbursement for seven non-voting members of the council representing the bidder and vendor community is estimated to be \$1,081.08 (\$154.44 mileage x 7 members) for each meeting for a total recurring increase in state expenditures in FY11-12 and subsequent years of \$2,162.16 (\$1,081 x 2).
- According to F & A, there will be a one-time increase in expenditures for the development of the grant and sub-grant recipient database that will equal \$80,000.
- The Office of the CPO will consist of four staff members to include the CPO, Deputy CPO, Chief Procurement Oversight Officer and one administrative assistant. Given the March 31, 2011, appointment date for the CPO, the FY10-11 expenditures for salary, benefits, and operational supplies for that position for the three month period will be \$51,250 (\$195,000 salary and benefits x 25% + \$10,000 operational supplies x 25%). All four newly established positions will be filled by July 1, 2011, in order to meet the July 1, and October 1, 2011 deadlines. The recurring state expenditures for FY11-12 and subsequent years for the four new positions created for the Office of the CPO total \$580,166 which includes salaries (\$345,706), benefits (\$194,460), and operational supplies (\$40,000).
- There will be a not significant increase in state expenditures for the provision of contracting reports to FRC by SBC and TDOT.
- There will be a not significant increase in state expenditures for the expanded review of contracting documents or the provision of policies to agencies and departments by the FRC.
- A small increase in cases in the court system, which will result in additional state and local government expenditures for processing the cases and additional state and local

government revenue from fees, taxes and costs collected. These expenditures and revenue are estimated to be not significant.

- There will be a total of 4 new positions and a shift of 79 positions currently residing in DGS and F&A to the newly created procurement office in the department that will be determined by the Governor as a result of the implementation of this bill.
- Total increase in state expenditures for FY10-11 equal \$51,250 for the CPO salary, benefits, and operating supplies. Total increase in state expenditures for FY11-12 equal \$662,328.14 (\$2,162.16 Council travel + \$580,166 CPO office staff + \$80,000 one-time database costs). Total increase in state expenditures for FY12-13 equal \$582,328.16 (\$2,162.16 Council travel + \$580,166 CPO office staff).

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "White".

James W. White, Executive Director

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